



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R05-OAR-2009-0554; FRL-9923-35-Region 5]

**Approval of Other Solid Waste Incineration Units State Plan for
Designated Facilities and Pollutants: Indiana**

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving Indiana's State Plan to control air pollutants from "Other Solid Waste Incineration" (OSWI) units. The Indiana Department of Environmental Management (IDEM) submitted the State Plan to EPA on November 27, 2007. The State Plan is consistent with Emission Guidelines (EG) promulgated by EPA on December 16, 2005. This approval means that EPA finds that the State Plan meets applicable Clean Air Act (Act) requirements for OSWI units for which construction commenced on or before December 4, 2004. Once effective, this approval also makes the State Plan Federally enforceable.

DATES: This direct final rule will be effective **[insert date 60 days after date of publication in the Federal Register]**, unless EPA receives adverse comments by **[insert date 30 days after date of publication in the Federal Register]**. If adverse comments are received, EPA will publish a timely withdrawal of the direct

final rule in the Federal Register informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2009-0554, by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. Email: nash.carlton@epa.gov.
3. Fax: (312)692-2543.
4. Mail: Carlton T. Nash, Chief, Integrated Air Toxics Section, Air Toxics and Assessment Branch (AT-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. Hand Delivery: Carlton T. Nash, Chief, Integrated Air Toxics Section, Air Toxics and Assessment Branch (AT-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No.

EPA-R05-OAR-2009-0554. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of

encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. We recommend that you telephone Margaret Sieffert, Environmental Engineer, at (312) 353-1151 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Margaret Sieffert, Environmental Engineer, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard (AT-18J), Chicago, Illinois 60604, (312) 353-1151, sieffert.margaret@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. Background
- II. What Does the State Plan Contain?
- III. Does the State Plan Meet the EPA Requirements?
- IV. What Action is EPA Taking?
- V. Statutory and Executive Order Reviews

I. Background

On December 16, 2005, in accordance with sections 111 and 129 of the Act, EPA promulgated OSWI EGs and compliance schedules for the control of emissions from existing OSWI units. See 70 FR 74870. EPA codified these regulations at 40 CFR part 60, subpart FFFF. They include a model rule at 40 CFR §§ 60.3000 through 60.3078. "OSWI units" are very small municipal waste combustors and institutional waste incinerators. See 40 CFR 60.3078.

Under section 111(d) of the Act, EPA is required to develop regulations for existing sources of noncriteria pollutants (i.e., a pollutant for which there is no national ambient air quality standard) whenever EPA promulgates a standard for a new source. These would include OSWI units. Section 111(d) plans are subject to EPA review and approval.

Under section 129(b)(2) of the Act and the regulations at Subpart FFFF, states with OSWI units must submit to EPA plans

that implement the EGs. The plans must be at least as protective as the EGs, which are not Federally enforceable until EPA approves a State Plan (or promulgates a Federal Plan for implementation and enforcement).

40 CFR part 60, subpart B contains general provisions applicable to the adoption and submittal of State Plans for subject facilities under section 111(d), which would include OSWI units. On November 27, 2007, Indiana submitted its OSWI State Plan to EPA. This submission followed public hearings for preliminary adoption of the State Plan on December 6, 2006 and for final adoption on February 7, 2007. The State adopted the final Plan on February 7, 2007, and became effective on August 9, 2007. The Plan includes State rule 326 IAC 11-9, which establishes emission standards for existing OSWI. EPA was sued and subsequently State Plan submittals were put on hold. See *Sierra Club v. EPA*, D.C. Cir. Nos. 06-1066, 07-1063. On March 17, 2014, EPA notified IDEM that it could now process the State Plan, but that IDEM needed to submit an Attorney General's Opinion regarding the State's legal authority to "Incorporate By Reference" the EG's. The AG's Opinion was sent on November 13, 2014.

II. What Does the State Plan Contain?

The State submittal is based on the OSWI EGs (§§ 60.2980-60.3078) and incorporates by reference significant portions of that rule. As prescribed by section 129 of the Act and in 40 CFR part 60, subparts B and FFFF, the State Plan addresses the nine required elements in 40 CFR 60.2983 as follows:

1. An inventory of affected OSWI units, including those that have ceased operation but have not been dismantled.
Indiana has provided this.
2. An inventory of the emissions from each of the OSWI units.
Indiana has provided this.
3. A compliance schedule for each affected incineration unit.
Indiana has provided a compliance schedule and a compliance date of August 9, 2010.
4. For each affected incineration unit, emission limitations, operator training and qualification requirements, a waste management plan, and operating parameter requirements that are at least as protective as the emission guidelines contained in 40 CFR 60.2983. Indiana has accomplished this, through the incorporation by reference (IBR) in 326 IAC 11-9.
5. Stack testing, recordkeeping, and reporting requirements.
Indiana has accomplished this, through the IBR in 326 IAC

11-9.

6. A transcript of the public hearing on the State Plan.

Indiana has certified that such a hearing was held, and that there were no comments.

7. A provision for State progress reports to EPA. Indiana has stated that it will submit data and information using the EPA Aerometric Emissions Information Retrieval System. The manner and form of reporting will be coordinated with EPA, Region 5.

8. An identification of enforceable State mechanisms selected for implementing the EGs. Indiana has provided a detailed list which identified the enforceable mechanisms.

9. A demonstration of the State's legal authority to carry out sections 111(d) and 129 of the Act in its State Plan.

Indiana has provided a detailed list which demonstrated that it has such legal authority. This includes the legal authority to incorporate by reference Federal EG provisions, as confirmed by an Indiana Attorney General's Opinion dated November 10, 2014.

III. Does the State Plan Meet the EPA Requirements?

EPA has evaluated the OSWI State Plan and related information submitted by Indiana for consistency with the Act,

EPA regulations and policy. For the reasons discussed above, EPA has determined that the State Plan meets all applicable requirements and, therefore, is approving it.

IV. What Action Is EPA Taking?

EPA is approving the State Plan which Indiana submitted on November 27, 2007, for the control of emissions from existing OSWI sources in the State. EPA is publishing this action without prior proposal because the Agency views this as a non-controversial action and anticipates no adverse comments. However, in the proposed rules section of this Federal Register publication, EPA is publishing a separate document that will serve as the proposal to approve the State Plan in the event adverse comments are filed. This rule will be effective **[insert date 60 days after date of publication in the Federal Register]** without further notice unless we receive relevant adverse written comments by **[insert date 30 days after date of publication in the Federal Register]**. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested

in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective **[insert date 60 days after date of publication in the Federal Register]**.

V. Statutory and Executive Order Reviews.

A. General Requirements

Under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory

Flexibility Act (5 U.S.C. 601 et seq.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). This rule is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Act. This rule also is not subject to

Executive Order 13045 (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing section 111(d)/129 plan submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a section 111(d)/129 plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a section 111(d)/129 plan submission, to use VCS in place of a section 111(d)/129 plan submission that otherwise satisfies the provisions of the Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report,

which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication of this document in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving Indiana's section 111(d)/129 plan revision for SSI sources may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control,
Administrative practice and procedure, Intergovernmental
relations, Reporting and recordkeeping requirements, Waste
treatment and disposal.

Dated: February 12, 2015.

Bharat Mathur,
Acting Regional Administrator, Region 5.

40 CFR part 62 is amended as follows:

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart P - Indiana

2. Add an undesignated center heading and §§ 62.3680, 62.3681, and 62.3682 to subpart P to read as follows:

Control of Air Emissions From Existing Other Solid Waste

Incinerator Units

§ 62.3680 Identification of plan.

On November 27, 2007, Indiana submitted the State Plan for implementing the Other Solid Waste Incineration Units (OSWI). The enforceable mechanism for this State Plan is a State rule codified in 326 Indiana Administrative Code (IAC) 11-9. The rule was adopted on February 7, 2007, and became effective on August 9, 2007.

§ 62.3681 Identification of sources.

The Indiana State Plan for existing Other Solid Waste Incineration (OSWI) units applies to all OSWI units as defined

in §60.3078 for which construction commenced on or before December 9, 2004 to comply with this subpart.

§ 62.3682 Effective date.

The Federal effective date of the Indiana State Plan for existing Sewage Sludge Incinerators is **[insert date 60 days after date of publication in the Federal Register]**.

[FR Doc. 2015-03792 Filed 02/25/2015 at 8:45 am; Publication Date:
02/26/2015]